IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2158 OF 1989

Standard Industries Ltd.
a Limited Company incorporated under
the Companies Act I of 1956 and
having their Registered Office at
Mafatlal Centre, Nariman Point,
Bombay 400 021.

Vs.

1. M/s. Archana Oil and Chemicals
carrying on business at 55,
Dharam Jyot, A.B.Nair road,
Juhu, Bombay 400 049.

2. Mrs. Archana Misra,
residing at 55, Dharam Jyot, A.B. Nair Road,
Juhu, Bombay 400 049.

..Defendants.

Mr.S.A.Ahmed i/by Thakkar & Bali for the Plaintiffs.

CORAM : A.M. KHANWILKAR, J.
DATE : 28/8/2007.

PC :

1. None appears for the defendants though duly served. No written statement has been filed. In the circumstances, in exercise of the powers under Order VIII Rule 10 of the Code of Civil Procedure, I proceed to pass the order in this suit.

2. In substance, the case of the plaintiffs is that the plaintiffs had sold, delivered and supplied the goods to the defendants as per the request of the defendants. The total principal amount in respect of

such goods supplied from time to time is Rs.10,59,760.74ps. which became due and payable by the defendants to the plaintiffs after adjusting certain credits to the defendants. In spite of repeated reminders by the plaintiffs, the defendants did not discharge their liability. Eventually, the plaintiffs have filed the present suit for the following reliefs:

> "That the defendants be decreed and ordered to pay to the plaintiffs a sum of Rs.16,26,860.70 inclusive of interest with further interest on Rs.10,59,760.74 at the rate of 18% per annum from the date of the suit till realization and costs".

3. In so far as claim of interest is concerned, the plaintiffs are relying on the terms and conditions mentioned in the invoices which specifies the interest at the rate 30% p.a. Nevertheless, the plaintiffs have claimed interest on the principal amount at the rate of only 21% p.a. till the filing of the suit and are claiming further interest at the rate of 18% p.a. It cannot be disputed that the transaction between the plaintiffs and the defendants was a commercial transaction.

4. As mentioned earlier, none appears for the

defendants though duly served. No written statement has been filed on their behalf to contest the suit of the plaintiffs. On the other hand, the plaintiffs have filed an affidavit in lieu of examination-in-chief sworn by one Tanaz B. Panthaky dated 27.8.2007. The facts stated in the plaint have been reiterated in the said affidavit. The case made out in the affidavit is supported by the original documents produced and relied on behalf of the plaintiffs. The plaintiffs have placed reliance on all the relevant invoices and delivery challans to establish the fact that the goods were sold and delivered to the defendants. The plaintiffs are also relying on the letters sent to the defendants on 22.2.1989, 7.3.1989 and 12.3.1989 respectively along with the acknowledgment receipt. The plaintiffs have also produced Statement of Account which indicates the outstanding amount at the foot of the account at the time of filing of the suit. Suffice it to observe that the case made out by the plaintiffs is substantiated not only from the affidavit of evidence of the Company Secretary of the plaintiffs but also by the compilation of the original documents produced before the court.

5. In my opinion therefore, this is a fit case to exercise powers under Order VIII Rule-10 of the Code of Civil Procedure. As observed earlier, the transaction between the parties is commercial transaction. Besides,

there is a condition overleaf the invoices that the defendants will be liable to pay interest at the rate of 30% p.a. for delayed payment. The plaintiffs however, have claimed interest at lessor rate of 21% p.a. till the institution of the suit and for further period at the rate of only 18% p.a. In my opinion, the plaintiffs are entitled for decree in respect of the principal amount, but also in respect of the interest as claimed in the plaint. Accordingly, in exercise of the powers under Order VIII Rule 10 of the Code of Civil Procedure, I proceed to pass the decree in terms of prayer clause (a) which reads thus :

> "That the defendants be decreed and ordered to pay to the plaintiffs a sum of Rs.16,26,860.70 inclusive of interest with further interest on Rs.10,59,760.74 at the rate of 18% per annum from the date of the suit till realization and costs".

. The defendants to pay the costs of the suit to the plaintiffs.

. Decree be drawn up accordingly.

(A.M. KHANWILKAR,J.)